



# STATE OF MONTANA

Department of Administration  
Division of Banking and Financial Institutions  
PO Box 200546, Helena, Montana 59620-0546  
(406) 841-2920 Fax (406) 841-2930

## APPLICATION FOR DEFERRED DEPOSIT LOAN LICENSE

(Effective August 1, 2000. Do not use previous versions of this application.)

Date: \_\_\_\_\_

### Fees:

Each location conducting deferred deposit loan business must be licensed. Licenses expire on December 31. A fee of \$375.00 for each proposed location must be included with this application. Applications submitted between July 1-October 31 are required to pay half of the licensing fee in the amount of \$187.50 for each proposed location. The Division of Banking and Financial Institutions does not accept applications during November and December due to the processing of licensing renewals.

Amount Remitted \_\_\_\_\_

### General Information and Instructions:

This form is provided to applicants proposing to operate a business under the terms of the Montana Deferred Deposit Loan Act (Title 31, Chapter 1, Part 7, Montana Code Annotated).

A **"Deferred Deposit Loan"** is defined as *"...an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:*

- (a) a person accepts a check dated on the date the check is written and agrees to hold the check for a period of days prior to deposit or presentment; or*
- (b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check."*

A **"Deferred Deposit Lender"** is defined as *"...a person engaged in the business of making deferred deposit loans."* A **"Person"** is a natural person, sole proprietorship, firm, partnership, corporation, or other entity.

- ✓ An application for license must be completed in its entirety, with all applicable information and exhibits provided. If a particular item does not apply to the applicant's situation, enter "NA" or "None". Applications which are incomplete may be returned to the applicant. An application must be submitted for each proposed location and the address of the proposed application must be clearly identified in the application.

**EXCEPTIONS:** Applicants submitting multiple applications at one time are required to provide only one copy of information that is common to all the applications. Applicants that have other locations licensed by the Division may omit required information or exhibits if the information or exhibits on file with the Division have not changed materially and are less than two years old. Indicate that such information is on file with the Division.

- ✓ All information is to be typed or printed legibly in ink.
- ✓ Required exhibits as well as any additional information applicant considers appropriate are to be provided on letter size paper, except for official loan documents, which are to be provided in their original format.
- ✓ The application must be signed before a notary public.
- ✓ Application fees must be included with the application and are non-refundable.
- ✓ Each location conducting deferred deposit loan business must be licensed.
- ✓ If a licensee changes location the Division must be promptly notified. The original license must be surrendered and a new license with the proper address will be issued.

The original copy of the license is to be displayed at the licensed location in Montana or, if a Montana location is not maintained, at the office of the licensee's Montana registered agent.

Licenses expire at the end of the calendar year in which they are issued.

Licenses are non-transferable and non-assignable. If more than 25% of ownership in a licensee is transferred to a new owner, the licensee must apply for a new license.

Statutory and operational benefits conferred by a license apply only to business activity after the date of licensure. Business conducted prior to the date of licensure is not ratified or validated by obtaining a license.

Montana law requires each licensee to maintain books, accounts and records that will allow the Department to determine if the licensee is complying with the provisions of the Deferred Deposit Loan Act. Each licensee is also required to file an annual report using a form provided by the Department. Minimum information required in the report is detailed in Section 31-1-714 (2), attached to this application form.

## I. APPLICANT INFORMATION

Name to appear on license (include any assumed business name)			
Physical address of Licensed office			
Telephone		Fax	
Mailing address of Licensee			
Mailing address of Licensee's home office (if applicable)			

Persons to contact regarding:

	This application	License renewals	Montana complaints
Name & Title			
Address			
City, State			
Phone			
Fax			
E-mail			

## II. BUSINESS INFORMATION

1. Provide the name, and resume, employment history or business record of the person(s) to be in charge of the licensed location.
2. Describe any other business conducted in the same office as the licensee.
3. Has any court or regulatory authority ever cancelled, suspended or revoked the authority of the applicant, or any entity with which the applicant is or was associated? If so, please attach a sheet giving details.

Yes	No

### III. BUSINESS STRUCTURE

Applicant is a:

☐

Corporation  
**Go to "A" below**

Date of incorporation: \_\_\_\_\_

Publicly Traded? \_\_\_\_\_

☐

Limited Liability  
Company  
**Go to "B" below**

Date of formation: \_\_\_\_\_

☐

Partnership  
**Go to "C" below**

Date of formation: \_\_\_\_\_ Limited partnership? \_\_\_\_\_

☐

Proprietorship  
**Go to "D" below**

#### **A. All corporate applicants must provide the following information**

1. A list of the principal officers, their titles, and their business addresses.
2. A list of directors or trustees, their titles, if any, and their business addresses.
3. If not a publicly traded corporation, a list of the principal shareholders (those owning more than 20% of the outstanding shares) of the corporation, and their percentages of ownership.
4. A copy of the articles of incorporation showing the date of filing with the Secretary of State, and any amendments to those articles.
5. If using an assumed business name, a copy of the acknowledgement of registration of that name with the Montana Secretary of State.
6. A copy of the minutes of the directors' or stockholders' meeting at which business operations in Montana were authorized.
7. A certificate of good standing from the corporation's home state.
8. If the applicant is not a Montana corporation:
  - a. The name and address of the corporation's Montana registered agent
  - b. A certificate issued by the Montana Secretary of State authorizing applicant to do business in Montana.

#### **B. All limited liability company applicants must provide the following information**

1. A list of the manager(s) and other operating officers, their titles, and their business addresses.
2. If not managed by a manager, a list of the principal members, their titles, if any, and their business addresses.
3. A copy of the articles of organization showing the date of filing with the Secretary of State, and any amendments to those articles.
4. A copy of the operating agreement, if any, and any amendments to the agreement.
5. If using an assumed business name, a copy of the acknowledgement of registration of that name with the Montana Secretary of State.
6. A certificate of good standing or similar document from the company's home state.
7. If the applicant is not a Montana limited liability company:
  - a. The name and address of the company's Montana registered agent.
  - b. A certificate issued by the Montana Secretary of State authorizing applicant to do business in Montana

**C. All partnership applicants must provide the following information**

1. A list of the partners, their titles, if any, their ownership interest, and their business addresses. If the partnership is a limited partnership, indicate the general partner(s).
2. A copy of the partnership agreement showing the date of filing with the Secretary of State, and any amendments to the agreement.
3. If operating under a fictitious name, a certificate from the county clerk showing compliance with Montana laws pertaining to conducting business under a fictitious name.
4. If the applicant is a limited partnership, or a foreign partnership, the name and address of the applicant's Montana registered agent. Montana general partnerships that have designated an agent shall provide the agent's name and address.

**D. All proprietorship applicants must provide the following information**

1. A list of the owners of the applicant and their business addresses.

<b>IV. GENERAL</b>
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All applicants must provide the following information, as separate exhibits:

1. An itemized statement of applicant's current financial condition. If a publicly traded corporation, the corporation's latest form 10-K filing may be provided. If a partnership, financial statements for the general partner(s) are required. If a proprietorship, financial statements for the proprietor(s) are required. Financial statements other than those provided by a public accountant or contained in a corporation's annual report or form 10-K must be originals and be signed by the preparer.
2. A written statement certifying that applicant has unencumbered assets of at least \$25,000 for each proposed location.
3. If any persons other than those named in this application and other than stockholders, partners or members of the applicant are to provide capital, please provide details, including names, amounts to be provided, and the nature of the arrangements.
4. List of other states in which licenses to conduct the same type of business are held.
5. A statement listing fictitious names under which applicant has conducted business.
6. A copy of all loan and disclosure documents proposed to be used by applicant, as required by Section 31-1-721, Montana Code Annotated.
7. A current schedule of loan fees and charges.
8. A copy of the required \$10,000 bond, including the name of the surety company, for each location proposed to be licensed.
9. A sworn statement (attached) executed by or on behalf of the applicant affirming that prohibited criminal or civil processes will not be used to collect payments.
10. Details of any current or anticipated civil litigation, as well as any judgements resulting from civil litigation, including the amount of any judgements and their current status.
11. A Personal Questionnaire (form is attached) completed by each principal in a proprietorship, each general partner in a partnership, the principal officers and all active directors in a corporation or each manager of a limited liability company, as well as the person to be in charge of the proposed licensed location.
12. Title 39, Chapter 71, Montana Code Annotated, generally requires every employer to provide workers' compensation insurance for its employees. Provide the name of applicant's workers' compensation insurance carrier, or the reasons why applicant is exempt from providing such coverage.

## V. CHANGE OF OFFICERS, DIRECTORS OR MANAGERS

Applicant agrees, if a license is issued, to notify the Department of Administration of any change of officers, directors or managers associated with its Montana business, within 10 days of the effective date of such change. Notification will set forth the changes made, the names of the persons involved, a completed Personal Questionnaire (form is attached), and a statement of the qualifications of each person not formerly in an official position.

## VI. SIGNATURES

For corporations or limited liability companies:

Entity Name: \_\_\_\_\_

(IMPRINT SEAL)

By: \_\_\_\_\_

Its: \_\_\_\_\_

And By: \_\_\_\_\_ And By: \_\_\_\_\_

Its: \_\_\_\_\_ Its: \_\_\_\_\_

For Partnerships and Proprietorships:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_

\_\_\_\_\_ known to me to be the person whose signature appears on this

document. Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_ .

(SEAL)

\_\_\_\_\_  
Notary Public

For the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## SWORN STATEMENT

I, \_\_\_\_\_, the undersigned, whose relationship with the applicant is \_\_\_\_\_, do solemnly swear that the applicant will not in the future, directly or indirectly, use criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect loans in default.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Signature \_\_\_\_\_

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Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_  
\_\_\_\_\_ known to me to be the person whose signature appears on this  
document. Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_.

(SEAL)

\_\_\_\_\_ Notary Public

For the State of \_\_\_\_\_

Residing at \_\_\_\_\_

My Commission expires: \_\_\_\_\_

## PERSONAL QUESTIONNAIRE

To be completed by each principal in a proprietorship, each general partner in a partnership, the principal officers and all active directors in a corporation or each manager of a limited liability company, as well as the person to be in charge of the proposed licensed location.

Name: \_\_\_\_\_

Title or Position: \_\_\_\_\_

	Yes	No
Have you violated the laws of any other state relating to interest or charges on any type of credit transaction?		
Have you ever entered a plea of guilty or nolo contendere to, or been convicted of, a felony or a misdemeanor other than a misdemeanor traffic violation?		
Have you ever been confined in a city, county, state or federal penal institution for any reason other than to serve a sentence for a misdemeanor traffic violation?		
Have you ever been held liable in any civil or criminal fraud action or has ever been found, in a proceeding before any federal, state, or local court or agency, to have committed fraud?		
Is there pending, at any governmental level, any proceeding charging you with having committed a felony or misdemeanor other than a misdemeanor traffic violation?		
Is there pending, at any governmental level, any proceeding charging you with actual or constructive fraud?		
Have you or any entity you have been associated with ever been a party to or had or claimed any interest in a civil proceeding?		
Have you, or any business with which you are or were associated, ever been refused a license to operate the type of business proposed or had a license to operate such a business revoked or suspended in any other state?		
Have you ever changed or been known by any name other than that provided in the application?		

*Any affirmative answer to any of the above questions shall be explained in detail on separate pages.*

I certify that the above answers are true and correct to the best of my knowledge and belief. I understand that inaccuracies or omissions may cause denial of this application for license.

SIGNATURE	TITLE	DATE
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Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_  
 \_\_\_\_\_ known to me to be the person whose signature appears on this  
 document. Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL) For the State of \_\_\_\_\_  
 Residing at \_\_\_\_\_  
 My Commission expires: \_\_\_\_\_



## Montana Deferred Deposit Loan Act

### Part Compiler's Comments:

Effective Date: This part is effective October 1, 1999.

Severability: Section 18, Ch. 404, L. 1999, was a severability clause.

**31-1-701. Short title.** This part may be cited as the "Montana Deferred Deposit Loan Act".

History: En. Sec. 1, Ch. 404, L. 1999.

**31-1-702. Purpose -- rules.** (1) The purpose of this part is to protect consumers who enter into short-term, high-rate loans with lenders from abuses that occur in the credit marketplace when the lenders are unregulated.

(2) The department may adopt rules to implement the provisions of this part. The rules may include but are not limited to rules establishing forms and procedures for licensing, rules pertaining to acceptable practices at a business location, rules establishing disclosure requirements, and rules establishing complaint and hearing procedures. History: En. Sec. 2, Ch. 404, L. 1999.

**31-1-703. Definitions.** For the purposes of this part, the following definitions apply:

(1) "Account" means any banking, checking, credit union, commercial, savings, savings and loan, brokerage, investment, or other kind of depository account held by a consumer.

(2) "Check" means a negotiable instrument, as defined in 30-3-104, that is drawn on a bank and is payable on demand at the maturity of a deferred deposit loan.

(3) "Consumer" means a natural person who, singly or jointly with another natural person, enters into a deferred deposit loan.

(4) "Deferred deposit lender" or "licensee" means a person engaged in the business of making deferred deposit loans.

(5) "Deferred deposit loan" means an arrangement, including all representations made by the deferred deposit lender whether express or implied, in which:

(a) a person accepts a check dated on the date on which the check is written and agrees to hold the check for a period of days prior to deposit or presentment;

(b) a person accepts a check dated subsequent to the date on which the check is written and agrees to hold the check for deposit or presentment until the date written on the check; or

(c) a person accepts written authorization from a consumer to electronically deduct from the consumer's account on a specific date the amount of the loan and fees that are authorized under this part.

(6) "Department" means the department of administration.

(7) "Person" means a natural person, sole proprietorship, firm, partnership, corporation, or other entity.

History: En. Sec. 3, Ch. 404, L. 1999; amd. Sec. 1, Ch. 81, L. 2001; amd. Sec. 71, Ch. 483, L. 2001.

### Compiler's Comments:

2001 Amendments -- Composite Section: Chapter 81 inserted definition of account; in definition of deferred deposit loan inserted (c) referring to accepting written authorization from a consumer to electronically deduct from the consumer's account; and made minor changes in style. Amendment effective October 1, 2001.

Chapter 483 in definition of department substituted "department of administration" for "department of commerce". Amendment effective July 1, 2001.

**31-1-704. Scope.** (1) This part applies to deferred deposit lenders and to persons who facilitate, enable, or act as a conduit for persons making deferred deposit loans.

(2) This part does not apply to:

(a) banks, savings and loan associations, credit unions, or other state or federally regulated financial institutions;

(b) retail sellers who cash checks incidental to or independent of a sale and who do not charge more than \$2 per check for the service; or

(c) a collection agency licensed to do business in this state that has entered into an agreement with a deferred deposit lender for the collection of claims owed or due or asserted to be owed or due the deferred deposit lender. History: En. Sec. 4, Ch. 404, L. 1999; amd. Sec. 2, Ch. 81, L. 2001.

**Compiler's Comments:**

2001 Amendment: Chapter 81 inserted (2)(c) exempting collection agencies collecting for deferred deposit lenders from the provisions of deferred deposit loan laws; and made minor changes in style. Amendment effective October 1, 2001.

**31-1-705. License -- business locations -- rules.** (1) A person may not engage in or offer to engage in the business of making deferred deposit loans unless licensed by the department.

(2) An applicant for a license to engage in the business of making deferred deposit loans shall pay to the department a license application fee of \$375.

(3) The department may not issue or renew a license unless findings are made that:

(a) the financial responsibility, experience, character, and general fitness of the applicant warrant the belief that the business will be operated lawfully and fairly and within the provisions of this part;

(b) the applicant has unencumbered assets of at least \$25,000 for each location;

(c) the applicant has provided a sworn statement that the applicant will not in the future, directly or indirectly, use a criminal process to collect the payment of deferred deposit loans or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default; and

(d) other information that the department considers necessary has been provided.

(4) A license may not be issued for longer than 1 year. The license year must coincide with the calendar year, and the license fee for any period less than 6 months is \$187.50.

(5) Each licensee shall post a bond in the amount of \$10,000 for each location. The bond must continue in effect for 2 years after the licensee ceases operation in the state. The bond must be available to pay damages and penalties to consumers harmed by any violation of this part.

(6) More than one place of business may not be maintained under the same license, but the department may issue more than one license to the same licensee upon compliance with the provisions of this section governing issuance of a single license. **History: En. Sec. 5, Ch. 404, L. 1999; amd. Sec. 3, Ch. 81, L. 2001.**

**Compiler's Comments:**

2001 Amendment: Chapter 81 in (4) in first sentence after "year" deleted "and a renewal of a license may not be provided if the licensee has violated a provision of this part" and inserted second sentence requiring license year to be a calendar year and providing license fee for periods of less than 6 months; and made minor changes in style. Amendment effective October 1, 2001.

**31-1-706. License renewal fee.** (1) A person licensed under 31-1-705 shall pay, on or before December 1 of each year, a license renewal fee of \$125 for each license that the person holds under this part.

(2) Failure to pay any yearly license renewal fee required by this section within the time prescribed will result in the automatic revocation of the license subject to renewal.

**History: En. Sec. 4, Ch. 81, L. 2001.**

**Compiler's Comments:**

Effective Date: This section is effective October 1, 2001.

**31-1-707 through 31-1-710 reserved.**

**31-1-711. Annual examinations -- fee.** (1) The department shall conduct annually an examination of each licensee's deferred deposit lending operation to ensure that the licensee is in compliance with the provisions of this part.

(2) A licensee shall pay the department a fee in the amount of \$300 a day for each examiner required to conduct an annual examination.

(3) A licensee shall make available to a department examiner the information required under 31-1-714 or as required by rule.

(4) Completion of an annual examination must, in the absence of the department's finding just cause to revoke or suspend a license, constitute grounds for license renewal.

**History: En. Sec. 6, Ch. 404, L. 1999.**

**31-1-712. License revocation.** (1) If the department finds, after due notice and hearing or opportunity for hearing, as provided in the Montana Administrative Procedure Act, that a licensee or an officer, agent, employee, or representative of the licensee has violated any of the provisions of this part, has failed to comply with the rules, regulations, instructions, or orders promulgated by the department, has failed or refused to make required reports to the department, or has furnished false information to the department, the department may is-

sue an order revoking or suspending the right of the licensee, directly or through an officer, agent, employee, or representative, to do business in this state as a licensee.

(2) A revocation, suspension, or surrender of a license does not relieve the licensee from civil or criminal liability for acts committed prior to the revocation, suspension, or surrender of the license.

History: En. Sec. 7, Ch. 404, L. 1999.

**31-1-713. Complaint procedure.** The department shall maintain a list of licensees that is available to interested persons and to the general public. The department shall also establish by rule a procedure under which an aggrieved consumer or any member of the public may file a complaint against a licensee or an unlicensed person who violates any provision of this part. The department may hold hearings upon the request of a party to the complaint, make findings of fact or conclusions of law, issue cease and desist orders, refer the matter to the appropriate law enforcement agency for prosecution for a violation of this part, seek injunctive or other relief in district court, or suspend or revoke a license granted under this part.

History: En. Sec. 8, Ch. 404, L. 1999.

**31-1-714. Information and annual reports.** (1) Each licensee shall keep and use books, accounts, and records that will enable the department to determine if the licensee is complying with the provisions of this part and maintain any other records required by the department. The department is authorized to examine the records at any reasonable time. The records must be kept for 4 years following the last entry on a loan and must be kept according to generally accepted accounting procedures that include an examiner being able to review the recordkeeping and reconcile each consumer loan with documentation maintained in the consumer's loan file records.

(2) Each licensee shall file, on forms prescribed by the department, an annual report with the department on or before March 31 for the 12-month period in the preceding year ending as of December 31. The report must disclose in detail and under appropriate headings:

(a) the resources, assets, and liabilities of the licensee at the beginning and the end of the period;

(b) the income, expense, gain, loss, and balance sheets;

(c) the total number of deferred deposit loans made in the year ending as of December 31 of the previous year;

(d) the total number of deferred deposit loans outstanding as of December 31 of the previous year;

(e) the minimum and maximum amount of checks for which deposits were deferred in the year ending as of December 31 of the previous year;

(f) the total number and dollar amount of returned checks, the total number and dollar amount of checks recovered, and the total number and dollar amount of checks charged off during the year ending as of December 31 of the previous year;

(g) the total number and dollar amount of agreements involving electronic transactions or deductions, the total number and dollar amount of electronic deductions made by the licensee, and the total number and dollar amount of electronic deductions for insufficient funds charged off during the year ending as of December 31 of the previous year; and

(h) verification that the licensee has not used a criminal process or caused a criminal process to be used in the collection of any deferred deposit loans or used any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default during the year ending as of December 31 of the previous year.

(3) A report must be verified by the oath or affirmation of the owner, manager, or president of the deferred deposit lender.

(4) (a) If a licensee conducts another business or is affiliated with other licensees under this part or if any other situation exists under which allocations of expense are necessary, the licensee shall make the allocation according to appropriate and reasonable accounting principles as approved by the department.

(b) Information about any other business conducted on the same premises where deferred deposit loans are made must be provided as required by the department.

(5) Each licensee shall file a copy of the disclosure documents described in 31-1-721 with the department prior to the date of commencement of business at each location, at the time any changes are made to the documents, and annually upon renewal of the license. These documents must be available to interested parties and to the general public through the department.

History: En. Sec. 9, Ch. 404, L. 1999; amd. Sec. 5, Ch. 81, L. 2001.

#### **Compiler's Comments:**

2001 Amendment: Chapter 81 inserted (2)(g) requiring the disclosure of certain information involving electronic transactions or deductions; and made minor changes in style. Amendment effective October 1, 2001.

**31-1-715. Loan requirements.** (1) Each deferred deposit loan may not have a term that exceeds 31 days.

(2) The amount of the deferred deposit loan, exclusive of the fee allowed in 31-1-722(2), may not exceed \$300.

(3) The minimum amount of a deferred deposit loan is \$50.

(4) The check written by the consumer in a deferred deposit loan must be made payable to the licensee.

(5) Only the licensee may make an electronic deduction from the consumer's account. The licensee shall ensure that information obtained from the consumer about the consumer's account remains confidential.

(6) The licensee shall provide the consumer, or each consumer if there is more than one, with a copy of the loan documents described in 31-1-721 upon consummation of the loan.

(7) The holder or assignee of any check written by a consumer in connection with a deferred deposit loan takes the instrument subject to all claims and defenses of the consumer.

**History:** En. Sec. 10, Ch. 404, L. 1999; amd. Sec. 6, Ch. 81, L. 2001.

**Compiler's Comments:**

2001 Amendment: Chapter 81 inserted (5) providing that only licensee can make electronic deduction from consumer's account and requiring confidentiality on licensee's part; and made minor changes in style. Amendment effective October 1, 2001.

**31-1-716 through 31-1-720 reserved.**

**31-1-721. Required disclosures -- loan agreement.** (1) Before entering into a deferred deposit loan, the licensee shall deliver to the consumer a pamphlet prepared by or at the direction of the department that:

(a) explains, in simple language, all of the consumer's rights and responsibilities in a deferred deposit loan transaction;

(b) includes a telephone number to the department's office that handles concerns or complaints by consumers; and

(c) informs consumers that the department's office can provide information about whether a lender is licensed and other legally available information.

(2) Licensees shall provide consumers with a written agreement on a form specified or approved by the department that can be kept by the consumer, which must include the following information:

(a) the name, address, and phone number of the licensee making the deferred deposit loan and the initials or other written means of identifying the individual employee who signs the agreement on behalf of the licensee;

(b) an itemization of the fees and interest charges to be paid by the consumer;

(c) a clear description of the consumer's payment obligations under the loan; and

(d) in a manner that is more conspicuous than the other information provided in the loan document and that is in at least 14-point bold typeface, a statement that "you cannot be prosecuted in criminal court for collection of this loan". The statement must be located immediately preceding the signature of the consumer.

**History:** En. Sec. 11, Ch. 404, L. 1999.

**31-1-722. Prohibited and permitted fees -- attorney fees and costs.** (1) A licensee may not charge or receive, directly or indirectly, any interest, fees, or charges except those specifically authorized by this section.

(2) A licensee may not charge a fee for each deferred deposit loan entered into with a consumer that exceeds 25% of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan.

(3) If there are insufficient funds to pay a check on the date of presentment, a licensee may charge a fee, not to exceed \$15. Only one fee may be collected pursuant to this subsection with respect to a particular check even if it has been redeposited and returned more than once. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(4) If the loan involves an electronic deduction and there are insufficient funds to deduct on the date on which the payment is due, a licensee may charge a fee, not to exceed \$15. Only one fee may be collected pursuant to this subsection with respect to a particular loan even if the licensee has attempted more than once to deduct the amount due from the consumer's account. A fee charged pursuant to this subsection is a licensee's exclusive charge for late payment.

(5) If the loan agreement in 31-1-721 requires, reasonable attorney fees and court costs may be awarded to the party in whose favor a final judgment is rendered in any action on a deferred deposit loan entered into pursuant to this part.

History: En. Sec. 12, Ch. 404, L. 1999; amd. Sec. 7, Ch. 81, L. 2001.

#### Compiler's Comments:

2001 Amendment: Chapter 81 in (2) after "25%" substituted "of the principal amount of the deferred deposit loan that is advanced or, in the case of an electronic transaction, 25% of the principal amount of the deferred deposit loan" for "of the face amount of the check against which the delayed deposit loan is advanced"; inserted (4) pertaining to late fee requirements with respect to insufficient funds involving an electronic deduction; and made minor changes in style. Amendment effective October 1, 2001.

**31-1-723. Prohibited acts.** A licensee making deferred deposit loans may not commit, or have committed on behalf of the licensee, any of the following prohibited acts:

- (1) engaging in the business of deferred deposit lending unless the department has first issued a valid license;
- (2) threatening to use or using a criminal process in this or any other state to collect on the loan made to a consumer in this state or any civil process to collect the payment of deferred deposit loans not generally available to creditors to collect on loans in default;
- (3) altering the date or any other information on a check received from a consumer;
- (4) altering or changing the date upon which the licensee and consumer agreed to make any electronic deductions from the consumer's account unless the consumer agrees in writing to the change;
- (5) making any false, misleading, or deceptive representation to a financial institution relating to a consumer who has agreed to provide payment for a loan through an electronic deduction;
- (6) using any device or agreement that would have the effect of charging or collecting more fees, charges, or interest than those allowed by this part, including but not limited to entering into a different type of transaction or renewing or rolling over a loan with the consumer;
- (7) engaging in unfair, deceptive, or fraudulent practices in the making or collection of a deferred deposit loan;
- (8) entering into a deferred deposit loan with a consumer that is unconscionable. In determining whether a deferred deposit loan transaction is unconscionable, consideration must be given to, but is not limited to, whether the amount of the loan exceeds 25% of the consumer's monthly net income.
- (9) charging to cash a check representing the proceeds of the deferred deposit loan;
- (10) charging to perform an electronic deduction or transaction to obtain the proceeds of the deferred deposit loan;
- (11) using or attempting to use the check provided by the consumer in a deferred deposit loan as security for purposes of any state or federal law;
- (12) using or attempting to use the consumer's authorization to deduct the amount set forth in the loan agreement or any other information obtained from the consumer or the consumer's financial institution for any purpose other than to collect the proceeds of the deferred deposit loan;
- (13) accepting payment of the deferred deposit loan through the proceeds of another deferred deposit loan provided by the same licensee or any affiliate;
- (14) making a deferred deposit loan that, when combined with another outstanding deferred deposit loan owed to the licensee, exclusive of the fee allowed in 31-1-722(2), exceeds a total of \$300 when combining the face amount of the checks written in connection with each loan. Regardless of the total of the loans, a licensee may not make a loan to a consumer who has two or more deferred deposit loans outstanding with the licensee.
- (15) renewing, repaying, refinancing, or consolidating a deferred deposit loan with the proceeds of another deferred deposit loan made to the same consumer. However, a licensee may without charge extend the term of the loan beyond the due date.
- (16) accepting any collateral for a deferred deposit loan;
- (17) charging any interest, fees, or charges other than those specifically authorized by this part, including but not limited to charges for insurance;
- (18) threatening to take any action against a consumer that is prohibited by this part or making any misleading or deceptive statements regarding the deferred deposit loan;
- (19) making a misrepresentation of a material fact by an applicant in obtaining or attempting to obtain a license;
- (20) including any of the following provisions in the loan agreement required by 31-1-721:
  - (a) a hold harmless clause;

- (b) a confession of judgment clause;
- (c) a waiver of the right to a jury trial, if applicable, in any action brought by or against a consumer;
- (d) a mandatory arbitration clause;
- (e) any assignment of or order for payment of wages or other compensation for services;
- (f) a provision in which the consumer agrees not to assert any claim or defense arising out of the contract; or
- (g) a waiver of any provision of this part.

**History:** En. Sec. 13, Ch. 404, L. 1999; amd. Sec. 8, Ch. 81, L. 2001.

**Compiler's Comments:**

2001 Amendment: Chapter 81 inserted (4) referring to altering the date agreed upon for electronic deductions; inserted (5) pertaining to representations to financial institutions relating to electronic deductions; inserted (10) prohibiting charging to perform an electronic deduction or transaction; inserted (12) prohibiting use of a consumer's authorization for purposes other than collecting proceeds of loan; and made minor changes in style. Amendment effective October 1, 2001.

**31-1-724. Civil remedies.** (1) The remedies provided in this section are cumulative and apply to licensees and unlicensed persons to whom this part applies.

(2) Any violation of this part constitutes an unfair or deceptive trade practice.

(3) Any person found to have violated this part is liable to the consumer for actual and consequential damages, plus statutory damages of \$1,000 for each violation, plus costs and attorney fees.

(4) A consumer may sue for injunctive and other appropriate equitable relief to stop a person from violating any provisions of this part.

(5) The consumer may bring a class action suit to enforce this part.

(6) The remedies provided in this section are not intended to be the exclusive remedies available to a consumer for a violation of this part.

**History:** En. Sec. 14, Ch. 404, L. 1999.

**31-1-725. Criminal penalties.** Any person, including a member, officer, or director of a deferred deposit lender who knowingly violates this part is guilty of a misdemeanor and, on conviction, is subject to a fine not exceeding \$1,000 or imprisonment not exceeding 6 months, or both.

**History:** En. Sec. 15, Ch. 404, L. 1999.